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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,327	11/13/2003	Daniel Craven	P-US-PR-1091	1986
7590 Michael P. Leary Group Patent Counsel Black & Decker Corporation, Mail Stop TW199 701 E. Joppa Rd Towson, MD 21286			EXAMINER DURAND, PAUL R	
			ART UNIT 3721	PAPER NUMBER
			MAIL DATE 07/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary	Application No. 10/712,327	Applicant(s) CRAVEN ET AL.	
	Examiner Paul Durand	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,7-20 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,7-9,12-15,17-22 and 25 is/are rejected.
- 7) ☒ Claim(s) 10,11,16,23,24 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. However in view of newly cited art, prosecution of the application has been reopened and a new grounds of rejection is set for the below. The after final amendment filed 6/1/2007 has been entered.

This action is non-final.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 12 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, the term "motor housing" lacks antecedent basis.

In claim 14, the term "linkage" lacks antecedent basis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 4, 7, 8 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Matthews (US 3,742,364).

In claim 1, Matthews discloses the invention as claimed including an electric motor driven hand-held tool comprising a tool housing, a handle 10, projecting from a first side of the housing, a motor 13, located within the housing, an integrated switch unit 12, the switch unit including an electronic motor control unit 16, having an actuator 28, a first manually operable switch member 14, located in the handle and adjacent to the integrated switch unit and operatively connected to the motor control unit and to which the motor control unit is responsive to power the motor, and a second manually operable switch member 46, located in the housing at a second side substantially opposite to the first side and operatively connected to the motor control unit via the actuator and to which the control unit is responsive to drive the motor in one of a selected forward and reverse direction, characterized in that the second manually operable switch member is located remotely from the switch unit on an upward facing portion of the tool housing which can be seen by a user of the tool during normal operation of the tool, and a linkage arrangement 44, is pivotally mounted on a motor housing portion of the tool housing so that manual actuation of the second manually operable switch member causes the linkage to pivot and to actuate the actuator (see entire document).

In claim 4, Matthews discloses the invention as claimed including a first manually operable switch member 14, located on a downward facing side (see figure 1).

In claims 7 and 8, Matthews discloses the invention as claimed including the linkage 44, pivotably mounted on a closed end of the motor housing, which motor housing end is adjacent to an end of the motor and where the closed end of the motor housing is the rearward end of the motor housing (see figure 1).

In claim 13, Matthews discloses the invention as claimed including a first arm (no number but generally indicated by the upward arm portion located on reference number 44 in figure 1) connecting the second switch to the linkage 44.

In claim 15, Matthews discloses the invention as claimed including a first manually operable switch member 14 in the form of trigger switch.

In claim 14, Matthews discloses the invention as claimed including an electric motor driven hand-held tool comprising a tool housing within which is located a motor, an integrated switch unit 12, the switch unit including an electronic motor control unit 16, a first manually operable switch member 14, located adjacent to the integrated switch unit and operatively connected to the motor control unit and to which the motor control unit is responsive to power the motor, and a second manually operable switch member 46, and operatively connected to the motor control unit via an actuator 28, and to which the control unit is responsive to drive the motor in one of a selected forward and reverse direction, characterized in that the second manually operable switch member is located remotely from the switch unit on an upward facing portion of the tool housing which can be seen by a user of the tool during normal operation of the tool, and a linkage arrangement 44, is pivotably mounted within the tool housing so that manual actuation of the second manually operable switch member causes the linkage to pivot and to

actuate the actuator and the linkage arrangement (16) includes a first arm (no number but generally indicated by the upward arm portion located on reference number 44 in figure 1), extending from the linkage, and second manually operable switch member (14) is located on the first arm and a second arm (no number but generally indicated by the arm portion located to the left of reference number 44 in figure 1) extending from the linkage, and the second arm engages the actuator (see entire document).

6. Claims 12, 17, 22 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Dibbern (US 4,523,116).

In claims 12,17 and 22, Dibbern discloses the invention as claimed including a tool housing 11, including a motor housing portion (generally indicated by 19), an upper facing portion, a lower facing portion, and an interior circular boss 21, a handle 16, extending downward from the lower facing portion of the tool housing, a motor 25, located within the motor housing portion and defining a longitudinal axis, an integrated switch unit (generally indicated by 57), including an electronic motor control unit and located in the handle, a first manually operable switch member 14, projecting through handle and operatively connected to the motor control unit, and whereby a tool user controls the speed of the motor; a second manually operable switch member 77, projecting through the upward facing portion of the motor housing and whereby a tool user controls the direction of the motor, and a linkage arrangement (generally indicated by 62), pivotably mounted on the interior circular boss within the tool housing, the linkage operatively connecting the second manually operable switch member to the

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motor control unit and the pivot axis of the linkage is parallel to the longitudinal axis of the motor (see entire document).

In claim 25, Dibbern discloses the invention as claimed including a first manually operable switch member 14 in the form of trigger switch.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matthews in view of Becker et al. (US 6,199,642).

In claim 9, Matthews discloses the invention as claimed including an electric motor driven hand-held tool comprising a tool housing within which is located a motor defining a longitudinal axis "X", an integrated switch unit 12, the switch unit including an electronic motor control unit 16, a first manually operable switch member 14, located adjacent to the integrated switch unit and operatively connected to the motor control unit and to which the motor control unit is responsive to power the motor, and a second manually operable switch member 46, and operatively connected to the motor control unit via an actuator 28, and to which the control unit is responsive to drive the motor in one of a selected forward and reverse direction, with the second manually operable switch member is located remotely from the switch unit on an upward facing portion of

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the tool housing which can be seen by a user of the tool during normal operation of the tool, and a linkage arrangement 44, pivotally mounted on a motor housing portion of the tool housing (see entire document).

What Matthews does not disclose is the linkage axis being parallel to the longitudinal axis of the motor. However, Becker teaches that it is old and well known in the art to provide a linkage 22, which is parallel to the longitudinal axis of the motor, so that manual actuation of the second manually operable switch member causes the linkage to pivot and to actuate the actuator 26 or 27 (see figures 1,2,5 and col. 2, line 38 – col. 3, line 28).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Matthews with the linkage arrangement as taught by Becker for the purpose of actuating a tool.

9. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dibbern in view of Schell et al (US 5,738,177).

In claim 18, Dibbern discloses the invention as claimed except for the housing being formed as a jam pot housing. However, Schell teaches that it is old and well known in the art to provide a housing formed from a jam pot design for the purpose of increasing the ease of manufacture (see figure 1 and col. 5, lines 29-44). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Dibbern with the housing as taught by Bausch for the purpose of increasing the ease of manufacture

In claims 19 and 20, the modified invention of Bausch through Dibbern discloses the invention as claimed including bearing boss 21 located on a closed end of the motor housing located at the rear end adjacent to the motor (see figure 2).

Allowable Subject Matter

10. Claims 10, 11, 16, 23, 24 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paul Durand
July 25, 2007

A handwritten signature in dark ink, appearing to read 'Rinaldi I. Rada', with a long horizontal line extending to the right.

Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700